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RATNER & PRESTIA
P.O. BOX 980
VALLEY FORGE, PA 19482

In re Application of :
Noriyoshi Nishiyama, et al. :
Application No. 09/998,534 : **DECISION ON PETITION**
Filed: November 28, 2001 :
Attorney Docket No. MAT-7941US1 :

This is a decision on the Petition Under 37 CFR § 1.181(A), received in the United States Patent and Trademark Office (USPTO) on February 23, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawal of Holding of Abandonment."

The application was held abandoned for failure to timely file new formal drawings as required in the Notice of Allowability. Accordingly, the Notice of Abandonment was mailed February 10, 2004.

Petitioner states that on May 16, 2003 Applicants file the required corrected drawings. Petitioner has submitted a copy of the previously filed drawing and the return post card receipt, which acknowledges receipt of one (1) page of Drawing(s) on May 20, 2003, as evidenced by the "Office Date" stamp receipt thereon.

Applicant, is advised, that where a requirement is made and no petition is filed within the period set forth in 37 CFR §1.181(f) traversing the requirement—in this situation for corrected drawings—made in the Notice of Allowability, petitioner is assumed to have acquiesced to the requirement. Therefore, this application became abandoned for failure to timely file corrected formal drawings or to file a grantable petition traversing the requirement for formal drawings.

The record fails to disclose that petitioner responded in any manner to this notice. Accordingly, this application is properly abandoned for failure to file corrected drawings.

Should applicant be confronted with this situation in the future, applicant may timely reply in writing (see 37 CFR § 1.2) and traverse such a requirement much as was done in the petition. Applicant has the option to contact the examiner, requesting that he or she, in an Examiner Interview Summary Form or a Supplemental Notice of Allowability, which must be mailed prior to the expiration of the period for reply, upon reconsideration, withdraw any outstanding requirement.

Petitioner should seek relief by the filing a Petition to Revive An Abandoned Application under 37 CFR § 1.137.

■ Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable: and pursuant to paragraph (d) of this section.

■ Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Telephone inquires relating to the filing of the Petition under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or further correspondence with respect to the petition under 1.137 should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P O Box 1450
 Alexandria, VA 22313-1450

Telephone inquires relating to this decision may be directed to the undersigned at 703-305-8380.



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